

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LARRY CRENSHAW,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

Case No. C09-5485KLS

ORDER AFFIRMING THE  
COMMISSIONER'S DECISION TO DENY  
BENEFITS

Plaintiff, Larry Crenshaw, has brought this matter for judicial review of the denial of his application for disability insurance benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13. After reviewing the parties' briefs and the remaining record, the Court hereby finds and ORDERS:

FACTUAL AND PROCEDURAL HISTORY

Plaintiff currently is 57 years old.<sup>1</sup> Tr. 53. He has a high school education and past relevant work as a short order cook, fast food cook, and security guard. Tr. 70, 75, 82; (Dkt. #15-2). On January 30, 2004, plaintiff filed an application for disability insurance benefits, alleging disability as of May 25, 2002, due to diabetes, arthritis, joint and back pain, hepatitis, and high blood pressure. Tr. 21, 65, 69.

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<sup>1</sup> Plaintiff's date of birth has been redacted in accordance with the General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

1 Plaintiff's application was granted initially on September 20, 2004, with an onset date of  
 2 disability of January 1, 2004. Tr. 55, 61. Upon reconsideration, his onset date of disability was  
 3 amended to October 8, 2003. Tr. 54. Plaintiff then requested a hearing, arguing he was disabled  
 4 as of his alleged onset date of May 25, 2002. Tr. 21, 1034-37. A hearing was held before an  
 5 administrative law judge ("ALJ") on March 6, 2007, at which plaintiff, represented by counsel,  
 6 appeared and testified, as did a vocational expert. Tr. 1032-54.

7  
 8 On April 23, 2007, the ALJ issued a decision, in which he found in relevant part:

- 9 (1) at step one of the sequential disability evaluation process,<sup>2</sup> plaintiff had not  
 10 engaged in substantial gainful activity since his alleged onset date of  
 disability;
- 11 (2) at step two, since his alleged onset date of disability, plaintiff had a "severe"  
 12 impairment consisting of diabetes with diabetic neuropathy, but as of  
 13 October 8, 2003, plaintiff had additional severe impairments consisting of a  
 major depressive disorder and an anxiety disorder;
- 14 (3) at step three, prior to October 8, 2003, none of plaintiff's impairments met  
 15 or medically equaled the criteria of any of those listed in 20 C.F.R. Part 404,  
 Subpart P, Appendix 1 (the "Listings");
- 16 (4) after step three but before step four, since his alleged onset date of disability,  
 17 plaintiff had the residual functional capacity to perform sedentary work with  
 18 certain additional non-exertional limitations;<sup>3</sup>
- 19 (5) at step four, plaintiff was incapable of performing his past relevant work;  
 and
- 20 (6) at step five, plaintiff was capable of performing other jobs existing in  
 21 significant numbers in the national economy prior to June 1, 2003, and thus  
 22 was not disabled before that date, but beginning on June 1, 2003, there was  
 23 not a significant number of jobs in the national economy he could perform,  
 and therefore he was disabled as of that date.

24  
 25 <sup>2</sup> The Commissioner employs a five-step "sequential evaluation process" to determine whether a claimant is  
 disabled. See 20 C.F.R. § 404.1520; 20 C.F.R. § 416.920. If the claimant is found disabled or not disabled at any  
 particular step, the disability determination is made at that step, and the sequential evaluation process ends. Id.

26 <sup>3</sup> "Exertional limitations" are those that only affect the claimant's "ability to meet the strength demands of jobs." 20  
 C.F.R. § 404.1569a(b). "Nonexertional limitations" only affect the claimant's "ability to meet the demands of jobs  
 other than the strength demands." 20 C.F.R. § 404.1569a(c)(1).

1 Tr. 21-28; (Dkt. #15-2). Plaintiff's request for review was denied by the Appeals Council on  
2 July 21, 2009, making the ALJ's decision the Commissioner's final decision. Tr. 5; 20 C.F.R. §  
3 404.981.  
4

5 On August 6, 2009, plaintiff filed a complaint in this Court seeking review of the ALJ's  
6 decision. (Dkt. #1). The administrative record was filed with the Court on October 19, 2009.  
7 (Dkt. #10). Plaintiff argues the ALJ's decision should be reversed and remanded to the  
8 Commissioner for an award of benefits or, in the alternative, for further administrative  
9 proceedings for the following reasons:  
10

- 11 (a) the ALJ erred in finding plaintiff's major depressive disorder and anxiety  
disorder were not severe prior to October 8, 2003;
- 12 (b) the ALJ erred in assessing plaintiff's credibility;
- 13 (c) the ALJ erred in failing to consider the lay witness evidence in the record;
- 14 (d) the ALJ erred in assessing plaintiff's residual functional capacity for the  
15 period between May 25, 2002, and June 1, 2003;
- 16 (e) the ALJ erred in failing to include all relevant limitations in the hypothetical  
17 question he posed to the vocational expert; and
- 18 (f) the ALJ erred in failing to use a mental health expert to assess the likely  
19 onset date of plaintiff's mental health conditions.

20 For the reasons set forth below, the Court disagrees that the ALJ erred in determining plaintiff to  
21 be not disabled, and therefore finds the ALJ's decision should be affirmed. While plaintiff has  
22 requested oral argument here, the undersigned finds such argument to be unnecessary.

### 23 DISCUSSION

24 This Court must uphold the Commissioner's determination that plaintiff is not disabled if  
25 the Commissioner applied the proper legal standard and there is substantial evidence in the  
26 record as a whole to support the decision. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir.

1 1986). Substantial evidence is such relevant evidence as a reasonable mind might accept as  
2 adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Fife v.  
3 Heckler, 767 F.2d 1427, 1429 (9th Cir. 1985). It is more than a scintilla but less than a  
4 preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); Carr v.  
5 Sullivan, 772 F. Supp. 522, 524-25 (E.D. Wash. 1991). If the evidence admits of more than one  
6 rational interpretation, the Court must uphold the Commissioner's decision. Allen v. Heckler,  
7 749 F.2d 577, 579 (9th Cir. 1984).

9 I. The ALJ's Step Two Analysis

10 At step two of the sequential disability evaluation process, the ALJ must determine if an  
11 impairment is "severe." 20 C.F.R. § 404.1520. An impairment is "not severe" if it does not  
12 "significantly limit" a claimant's mental or physical abilities to do basic work activities. 20  
13 C.F.R. § 404.1520(a)(4)(iii), (c); Social Security Ruling ("SSR") 96-3p, 1996 WL 374181 \*1.  
14 Basic work activities are those "abilities and aptitudes necessary to do most jobs." 20 C.F.R. §  
15 404.1521(b); SSR 85- 28, 1985 WL 56856 \*3.

17 An impairment is not severe only if the evidence establishes a slight abnormality that has  
18 "no more than a minimal effect on an individual[']s ability to work." See SSR 85-28, 1985 WL  
19 56856 \*3; Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996); Yuckert v. Bowen, 841 F.2d  
20 303, 306 (9th Cir.1988). Plaintiff has the burden of proving his "impairments or their symptoms  
21 affect [his] ability to perform basic work activities." Edlund v. Massanari, 253 F.3d 1152, 1159-  
22 60 (9th Cir. 2001); Tidwell v. Apfel, 161 F.3d 599, 601 (9th Cir. 1998). The step two inquiry  
23 described above, however, is a *de minimis* screening device used to dispose of groundless claims.  
24 Smolen, 80 F.3d at 1290.

26 As noted above, the ALJ found plaintiff's major depressive disorder and anxiety disorder

1 to be severe impairments as of October 8, 2003, but not prior thereto. Tr. 23. Specifically, the  
2 ALJ found as follows:

3 . . . the claimant first sought treatment for major depressive disorder and  
4 anxiety disorder in October of 2003. 7F/02. His reported symptoms  
5 include[d] depressed mood, anger, agitation, irritability, fear, flashbacks,  
6 intrusive recollections, sleep disturbances, fatigue, poor concentration, social  
7 withdrawal, paranoia, and some suicidal ideation. 7E/190, 202, 408-409; 8F/1.  
8 He also experiences auditory and visual hallucinations. *See, e.g.*, 7F/143, 148,  
9 151, 161. He was found to have extremely poor concentration during  
10 psychological testing. 7F/144. The claimant was given a global assessment of  
11 functioning (“GAF”) score of 35 in October of 2003, representing some  
12 impairment in reality testing or communication, or major impairment in  
13 several areas such as work or school, family relations, judgment, thinking, or  
14 mood. 7F/201.

15 Consultative psychiatrist Richard Price, M.D., examined the claimant in July  
16 of 2004. 8F/1-4. Dr. Price observed that the claimant had very slow cognitive  
17 function. 8F/4. Dr. Price diagnosed the claimant with posttraumatic stress  
18 disorder, alcohol and cocaine dependence in early remission, intermittent  
19 explosive disorder, and recurrent depression, with a GAF score of 40 to 45.<sup>[4]</sup>

20 Finally, I note that the claimant received 100 percent service connected  
21 disability from the Veteran’s Administration due to posttraumatic stress  
22 disorder. 13E/2-3. This was effective April 1, 2004.

23 The state agency did not find sufficient evidence of mental impairments prior  
24 to October of 2003, but found the claimant was disabled due to mental  
25 impairments as of October 8, 2003. I agree with the state agency that the  
26 claimant’s mental impairments more than minimally impacted his vocational  
functioning as of October 8, 2003. Accordingly, I find the claimant’s  
affective disorder and anxiety disorder were severe impairments as of October  
8, 2003. However, the claimant’s mental impairments were non-severe prior  
to October 8 2003 because there is literally no suggestion of mental  
impairments in the medical record [at] that time.

Tr. 23-24.

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<sup>4</sup> A GAF score is “a subjective determination based on a scale of 100 to 1 of ‘the [mental health] clinician’s judgment of [a claimant’s] overall level of functioning.’” *Pisciotta v. Astrue*, 500 F.3d 1074, 1076 n.1 (10th Cir. 2007). “A GAF score of 41-50 indicates ‘[s]erious symptoms . . . [or] serious impairment in social, occupational, or school functioning,’ such as an inability to keep a job.” *Id.* (quoting Diagnostic and Statistical Manual of Mental Disorders (Text Revision 4th ed. 2000) (“DSM-IV-TR”) at 34); *see also Cox v. Astrue*, 495 F.3d 614, 620 n.5 (8th Cir. 2007) (GAF score in forties may be associated with serious impairment in occupational functioning)

1 Plaintiff argues that “[t]he nature of the impairment, the evidence, and common sense  
2 suggests that this conclusion is not well founded.” (Dkt. #14, p. 7). But plaintiff points to no  
3 objective medical evidence in the record – nor, like the ALJ, does the Court find any – that  
4 shows any of his mental impairments, either separately or in combination, caused more than *de*  
5 *minimis* limitations in his ability to perform basic work activities. While it may be, as plaintiff  
6 argues, that his underlying mental conditions existed prior to October 8, 2003, again he has not  
7 established any work-related limitations stemming therefrom during that period. See Matthews v.  
8 Shalala, 10 F.3d 678, 680 (9th Cir. 1993) (“The mere existence of an impairment is insufficient  
9 proof of a disability”).  
10

11 Although plaintiff may believe that a finding of non-severity prior to that date defies both  
12 logic and common sense, the ALJ’s determination here is perfectly consistent with the law in this  
13 area and the facts of this case. That is, at step two of the sequential disability evaluation process,  
14 while a claimant’s reported symptoms must be taken into account (see 20 C.F.R. § 404.1529),  
15 the severity determination is made solely on the basis of the objective medical evidence in the  
16 record. See SSR 85-28, 1985 WL 56856 \*4. As just discussed, such evidence is simply absent  
17 from the record. In addition, it is inappropriate to base a step two finding on the evidence in the  
18 record concerning plaintiff’s past difficulties with supervisors and co-workers, as that evidence  
19 clearly comes from his own testimony and self-reports.  
20

21 Accordingly, the undersigned finds the ALJ did not err in finding plaintiff did not have a  
22 severe major depressive or anxiety disorder prior to October 8, 2003. Nor, as just discussed, is  
23 the record ambiguous or uncertain as to the severity of those impairments during that period, so  
24 as to require the ALJ to call a medical expert to testify in that regard. See Mayes v. Massanari,  
25 276 F.3d 453, 459 (9th Cir. 2001) (ALJ’s duty to further develop record triggered only when  
26

1 there is ambiguous evidence or when record is inadequate to allow for proper evaluation of  
2 evidence). To the contrary, the record unambiguously establishes plaintiff's major depressive  
3 disorder and anxiety disorder resulted in no work-related limitations during the time period in  
4 question here.

5 II. The ALJ's Assessment of Plaintiff's Credibility

6 Questions of credibility are solely within the control of the ALJ. Sample v. Schweiker,  
7 694 F.2d 639, 642 (9th Cir. 1982). The Court should not "second-guess" this credibility  
8 determination. Allen, 749 F.2d at 580. In addition, the Court may not reverse a credibility  
9 determination where that determination is based on contradictory or ambiguous evidence. Id. at  
10 579. That some of the reasons for discrediting a claimant's testimony should properly be  
11 discounted does not render the ALJ's determination invalid, as long as that determination is  
12 supported by substantial evidence. Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2001).  
13

14 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent  
15 reasons for the disbelief." Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996) (citation omitted).  
16 The ALJ "must identify what testimony is not credible and what evidence undermines the  
17 claimant's complaints." Id.; Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993). Unless  
18 affirmative evidence shows the claimant is malingering, the ALJ's reasons for rejecting the  
19 claimant's testimony must be "clear and convincing." Lester, 81 F.2d at 834. The evidence as a  
20 whole must support a finding of malingering. O'Donnell v. Barnhart, 318 F.3d 811, 818 (8th Cir.  
21 2003).  
22

23 In determining a claimant's credibility, the ALJ may consider "ordinary techniques of  
24 credibility evaluation," such as reputation for lying, prior inconsistent statements concerning  
25 symptoms, and other testimony that "appears less than candid." Smolen v. Chater, 80 F.3d 1273,  
26

1 1284 (9th Cir. 1996). The ALJ also may consider a claimant's work record and observations of  
2 physicians and other third parties regarding the nature, onset, duration, and frequency of  
3 symptoms. Id.

4 In his decision, the ALJ assessed plaintiff's credibility as follows:

5 The claimant alleges that he is disabled due to diabetes, arthritis, joint pains,  
6 back pain, hepatitis, and high blood pressure. 1E/2. He testified at the hearing  
7 that he was terminated from his last job as a security guard on May 25, 2002  
8 because he had stomach problems, could not be on his feet due to diabetes,  
and had trouble getting along with his supervisors.

9 After considering the evidence of record, I find that the claimant's medically  
10 determinable impairments could reasonably be expected to produce the  
11 alleged symptoms, but that the claimant's statements concerning the intensity,  
persistence and limiting effects of these symptoms are not entirely credible  
prior to June 1, 2003.

12 Tr. 26. Plaintiff argues, and the Court agrees, that the ALJ's credibility determination here is  
13 lacking in the requisite specificity. That is, the ALJ has failed to provide clear and convincing,  
14 let alone legitimate and specific, reasons for discounting plaintiff's credibility. Defendant argues  
15 that since the ALJ – immediately following the above two paragraphs – discussed the objective  
16 medical evidence in the record, which was not consistent with plaintiff's allegations of disabling  
17 symptoms, and that because some of that evidence contains a comment from two non-examining  
18 physicians regarding minimal treatment received by plaintiff, the ALJ did provide two legitimate  
19 reasons for discounting plaintiff's credibility here.  
20

21 It is true that a determination that a claimant's complaints are "inconsistent with clinical  
22 observations" can satisfy the clear and convincing requirement. Regennitter v. Commissioner of  
23 SSA, 166 F.3d 1294, 1297 (9th Cir. 1998). It also is true that an ALJ properly may discount the  
24 credibility of a claimant based on a lack of treatment. See Meanal v. Apfel, 172 F.3d 1111, 1114  
25 (9th Cir. 1999) (ALJ properly considered physician's failure to prescribe, and claimant's failure  
26

1 to request serious medical treatment for supposedly excruciating pain); Johnson v. Shalala, 60  
2 F.3d 1428, 1434 (9th Cir. 1995) (ALJ properly found prescription of physician for conservative  
3 treatment only to be suggestive of lower level of pain and functional limitation). Here, though,  
4 the ALJ gave no indication he was actually discounting plaintiff's credibility for these reasons.  
5 As such, it is impossible for this Court to determine exactly on what basis the ALJ found plaintiff  
6 to lack credibility. Accordingly, the ALJ erred here.

7  
8 The Court agrees with defendant, though, that this improper credibility determination was  
9 harmless in this case. An error is harmless only if it is "inconsequential" to the ALJ's "ultimate  
10 nondisability determination." Stout v. Commissioner, Social Security Admin., 454 F.3d 1050,  
11 1055 (9th Cir. 2006) (error harmless where it is non-prejudicial to claimant or irrelevant to ALJ's  
12 ultimate disability conclusion). As discussed above, the ALJ did not err in finding plaintiff did  
13 not have a severe mental impairment prior to October 8, 2003, as the objective medical evidence  
14 in the record failed to reveal the presence of any work-related limitations stemming from those  
15 impairments during that time period. As such, it makes no difference to the ultimate outcome of  
16 this matter that the ALJ erred in assessing plaintiff's allegations of significant mental limitations,  
17 as such allegations are insufficient by themselves to establish disability.

18  
19 Plaintiff's subjective complaints also largely are consistent with the ALJ's assessment of  
20 his physical residual functional capacity for that same time period. As noted above, the ALJ  
21 found plaintiff was able to perform sedentary work, but with certain additional non-exertional  
22 limitations. Specifically in regard to the latter, the ALJ found he could perform a job involving  
23 **"only occasional stooping, kneeling, and climbing ladders or ropes, in an environment**  
24 **without exposure to vibration or hazards such as heights."** Tr. 25 (emphasis in original).  
25 Plaintiff counters that he testified at the hearing that he essentially was fired from the last job he  
26

1 had because of his “ongoing physical problems.” (Dkt. 14, p. 10). What the record actually  
2 shows, however, is that plaintiff testified that he stopped working because he could not be on his  
3 feet for a full work period. See Tr. 1040. In addition, while plaintiff testified as well that he had  
4 “a lot of pain with [his] stomach” and that his “diabetes seemed [to] take a toll” (Tr. 1040-41), he  
5 did not testify or give any indication as to exactly what impact those conditions had on his ability  
6 to do the particular work tasks involved in that job.

7  
8 More importantly, however, plaintiff further testified that he “pretty much . . . was fired  
9 [from that job] due to some hearsay” from – and “problems getting along with” – his co-workers,  
10 and not because of his physical problems. Id. The Court notes as well that the objective medical  
11 evidence in the record fails to indicate plaintiff was experiencing any significant problems with,  
12 or was restricted from performing, work-related activities at the time due to stomach pain or  
13 diabetes-related issues. While again the ALJ did not note this specifically as a basis for rejecting  
14 plaintiff’s credibility, it does strongly indicate that his error in failing to do so (and in also failing  
15 to specifically note the conservative treatment plaintiff received) is largely inconsequential to the  
16 ALJ’s ultimate disability determination. For all of the above reasons, therefore, the Court finds  
17 the ALJ’s errors here do not form a sufficient basis for reversing his overall decision concerning  
18 plaintiff’s disability, or lack thereof, during the relevant time period.

19  
20 III. The ALJ’s Evaluation of the Lay Witness Evidence in the Record

21 Lay testimony regarding a claimant’s symptoms “is competent evidence that an ALJ must  
22 take into account,” unless the ALJ “expressly determines to disregard such testimony and gives  
23 reasons germane to each witness for doing so.” Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir.  
24 2001). In rejecting lay testimony, the ALJ need not cite the specific record as long as “arguably  
25 germane reasons” for dismissing the testimony are noted, even though the ALJ does “not clearly  
26

link his determination to those reasons,” and substantial evidence supports the ALJ’s decision. Id. at 512. The ALJ also may “draw inferences logically flowing from the evidence.” Sample, 694 F.2d at 642.

The record contains a written statement from plaintiff’s wife regarding her observations of plaintiff’s symptoms and limitations. See Tr. 101-07. Plaintiff argues the ALJ erred by failing to mention, and thus consider, this evidence in his decision. Defendant does not disagree that the ALJ erred in failing to do so, but argues that such error was harmless. The Court too agrees that while the ALJ clearly erred in failing to discuss the above lay witness evidence in his decision, it was inconsequential to his ultimate disability decision. This is because as defendant points out, none of the observations plaintiff’s wife makes in her statement relate to the particular period of time at issue here, namely that period between May 25, 2002, and June 1, 2003. In addition, the Court agrees with defendant that for the most part, nothing in that statement is inconsistent with the residual functional capacity with which the ALJ assessed plaintiff.

IV. The ALJ’s Assessment of Plaintiff’s Residual Functional Capacity

If a disability determination “cannot be made on the basis of medical factors alone at step three of the evaluation process,” the ALJ must identify the claimant’s “functional limitations and restrictions” and assess his or her “remaining capacities for work-related activities.” SSR 96-8p, 1996 WL 374184 \*2. A claimant’s residual functional capacity (“RFC”) assessment is used at step four to determine whether he or she can do his or her past relevant work, and at step five to determine whether he or she can do other work. Id. It thus is what the claimant “can still do despite his or her limitations.” Id.

A claimant’s residual functional capacity is the maximum amount of work the claimant is able to perform based on all of the relevant evidence in the record. Id. However, a claimant’s

1 inability to work must result from his or her “physical or mental impairment(s).” Id. Thus, the  
2 ALJ must consider only those limitations and restrictions “attributable to medically determinable  
3 impairments.” Id. In assessing a claimant’s RFC, the ALJ also is required to discuss why the  
4 claimant’s “symptom-related functional limitations and restrictions can or cannot reasonably be  
5 accepted as consistent with the medical or other evidence.” Id. at \*7.

6  
7 As noted above, the ALJ found that since his alleged onset date of disability plaintiff had  
8 the residual functional capacity to perform sedentary work, with the additional limitation that he  
9 perform a job involving “**only occasional stooping, kneeling, and climbing ladders or ropes,**  
10 **in an environment without exposure to vibration or hazards such as heights.**” Tr. 25  
11 (emphasis in original). Plaintiff contests the ALJ’s RFC assessment here, arguing the medical  
12 evidence in the record reveals that his diabetes was not under control for significant periods of  
13 time after he was fired from his last job, and that he was found to have significant cognitive  
14 impairments in mid-July 2004, suggesting his mental health condition had been present for years  
15 prior thereto. This latter argument, however, already has been rejected for the reasons set forth  
16 above, and plaintiff has failed to establish that high glucose levels alone constitutes a significant  
17 work-related limitation, and, most importantly, that such levels have significantly limited him in  
18 his ability to work in this case.

19  
20 V. The Hypothetical Question the ALJ Posed at Step Five

21  
22 If a claimant cannot perform his or her past relevant work, at step five of the disability  
23 evaluation process the ALJ must show there are a significant number of jobs in the national  
24 economy the claimant is able to do. Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20  
25 C.F.R. § 404.1520(d), (e). The ALJ can do this through the testimony of a vocational expert or  
26 by reference to the Commissioner’s Medical-Vocational Guidelines (the “Grids”). Tackett, 180

1 F.3d at 1100-1101; Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2000).

2 An ALJ's findings will be upheld if the weight of the medical evidence supports the  
3 hypothetical posed by the ALJ. Martinez v. Heckler, 807 F.2d 771, 774 (9th Cir. 1987); Gallant  
4 v. Heckler, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony therefore  
5 must be reliable in light of the medical evidence to qualify as substantial evidence. Embrey v.  
6 Bowen, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's description of the claimant's  
7 disability "must be accurate, detailed, and supported by the medical record." Embrey, 849 F.2d  
8 at 422 (citations omitted). The ALJ, however, may omit from that description those limitations  
9 he or she finds do not exist. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

11 In this case, the ALJ posed a hypothetical question to the vocational expert at the hearing,  
12 containing substantially the same limitations as the ALJ included in his assessment of plaintiff's  
13 residual functional capacity. See Tr. 1047-48. In response thereto, the vocational expert testified  
14 that an individual who had those limitations, and the same age, education and work experience as  
15 plaintiff, would be capable of performing other jobs. See Tr. 1048. Based on the vocational  
16 expert's testimony, the ALJ found that prior to June 1, 2003, plaintiff could perform other work  
17 existing in significant numbers in the national economy. See Tr. 27. Plaintiff argues the ALJ  
18 erred here by failing to include any mental functional limitations in the hypothetical question he  
19 posed for that time period. But, once more for the reasons discussed above, the ALJ did not err  
20 in failing to do so, given that the ALJ also did not err in finding no severe mental impairment for  
21 that period or in including any in his assessment of plaintiff's RFC.

#### 24 VI. Use of a Mental Health Expert to Determine Onset Date of Disability

25 Plaintiff argues the ALJ erred in failing to use a mental health expert to assess the likely  
26 onset date of his disabling mental health conditions. As noted by plaintiff, SSR 83-20 sets forth

1 the Commissioner's policy when establishing a claimant's onset date of disability. That ruling  
2 comes into play, however, only after the claimant has met the "ultimate burden" of proving  
3 disability prior to the expiration of his or her insured status. Armstrong v. Commissioner of the  
4 Social Security Administration, 160 F.3d 587, 590 (9th Cir. 1998). In other words, it is only in  
5 those cases where the claimant has established that he or she is in fact disabled and the "record is  
6 ambiguous as to the onset date of disability," that SSR 83-20 requires the ALJ to "assist the  
7 claimant in creating a complete record," which "forms a basis for" establishing a disability onset  
8 date. Id. Here, though, not only has plaintiff failed to establish that he was in fact disabled  
9 during the period between May 25, 2002, and June 1, 2003, but, as pointed out by defendant, the  
10 record is unambiguous regarding the date when plaintiff did become disabled. Accordingly, no  
11 error was committed by the ALJ in failing to use a medical expert here.

#### 12 13 CONCLUSION

14  
15 Based on the foregoing discussion, the Court finds the ALJ properly determined plaintiff  
16 to be not disabled prior to June 1, 2003. Accordingly, the ALJ's decision hereby is AFFIRMED.

17 DATED this 30th day of July, 2010.

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21 Karen L. Strombom  
22 United States Magistrate Judge  
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